

03-81-CD

INTERNATIONAL CUSTOM PRODUCTS, INC vs. DAVID STEELE

e+^1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

INTERNATIONAL CUSTOM  
PRODUCTS, INC.

Plaintiff,

v.

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING,

Defendant.

) CIVIL ACTION No. 2003-81-CD  
)  
) Complaint  
)  
) Filed on behalf of:  
) Plaintiff, International Custom Products, Inc.  
)  
) Counsel of record for this party:  
)  
) Michael G. Bock, Esquire  
) Pa. ID. 62360  
) Gregory H. Teufel, Esquire  
) Pa. ID. 73062  
) Schnader Harrison Segal & Lewis LLP  
) Suite 2700, Fifth Avenue Place  
) 120 Fifth Ave.  
) Pittsburgh, PA 15222  
) (412) 577-5289  
)  
) Christopher E. Mohney, Esq.  
) Pa. I.D. No. 63494  
) 90 Beaver Drive, Suite 201A  
) DuBois, PA 15801  
) (814) 375-1044

FILED

JAN 21 2003 (B)

0/11:52 AM

William A. Shaw  
Prothonotary

3 copy to Atty

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

INTERNATIONAL CUSTOM PRODUCTS, INC. : CIVIL ACTION No.

Plaintiff, :

VS. :

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING, :

Defendants. :

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief request by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU  
DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, THEN YOU SHOULD GO  
TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE  
YOU CAN GET LEGAL HELP.**

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641 Ext. 50-51

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

INTERNATIONAL CUSTOM PRODUCTS, INC. : CIVIL ACTION No.

Plaintiff :  
:

VS. :  
:

DAVID R. STEELE, D/B/A STEELE'S :  
PAINTING AND SANDBLASTING, :  
:

Defendants. :  
:

**COMPLAINT**

Plaintiff International Custom Products, Inc. ("ICP"), through its undersigned counsel, hereby files the following Complaint against David R. Steele, d/b/a Steele's Painting and Sandblasting ("Mr. Steele"):

**INTRODUCTION**

1. This action seeks to recover monies paid to a painting contractor (Mr. Steele) that made a pretense of performing painting preparatory work and was terminated for nonperformance and poor performance of his duties under a written agreement.

**PARTIES**

2. The Plaintiff, ICP, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania with an office and principal place of business at Oklahoma-Salem Road, P.O. Box 527A, DuBois, Clearfield County, Pennsylvania 15801-0527.

3. The Defendant, David R. Steele, d/b/a Steele's Painting and Sandblasting, is an individual residing at RD #1, Box 310, Falls Creek, Jefferson County, Pennsylvania 15840-9115.

## **JURISDICTION & VENUE**

4. This Court has original jurisdiction over this action pursuant to 42 Pa.Cons.Stat. § 931.

5. Venue is proper in this Court under Pa.R.Civ.P. 1006 because the transactions and occurrences out of which the causes of action set forth herein arose took place in Clearfield County.

## **BACKGROUND FACTS**

6. On or about October 17, 2001, Mr. Steele submitted a proposal to ICP and/or ICP's architects which proposed to furnish all the materials and perform all the labor necessary for the completion of the following:

Steele's Painting will clean and paint ceiling of Warehouse, Staging, Hanger, Dock, and Storage Areas. This will be done for \$1.97 per sq. ft. The walls will be done in these area's [sic] for \$1.92 per sq. ft. Steele's Painting will provide the labor and material for job completion. Steeles [sic] will not provide the heat and has questioned this. Time on completion is 2 to 3 month's [sic]. Start date mid. Nov. or later.

A copy of the October 17, 2001 Proposal is attached hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

7. On or about October 24, 2001, Mr. Steele faxed to ICP a handwritten document setting forth areas of the ICP buildings to be painted, and the cost, price per square foot, and square feet of area for the ceiling, walls, and floor of each area, along with total prices for all ceilings, walls and floors, and for all ceilings, walls and floors excluding the hanger. With certain items crossed out and/or circled, the handwritten document, which is attached hereto as Exhibit B and is incorporated by reference as if fully set forth herein, set forth the following:

|           |         | cost        | price per sq. ft. | Sq. ft. of area |
|-----------|---------|-------------|-------------------|-----------------|
| Warehouse | ceiling | \$76,000.00 | \$1.90            | 40,000.00       |
|           | walls   | \$18,500.00 | \$1.85            | 10,000.00       |

|         |              |                    |                         |                    |
|---------|--------------|--------------------|-------------------------|--------------------|
|         | floor        | \$30,000.00        | \$ .75—new pitt sq. ft. | 40,000.00          |
| Staging | ceiling      | \$19,000.00        | \$1.90                  | 10,000.00          |
|         | walls        | \$11,000.00        | \$1.85                  | 6,000.00           |
|         | floor        | \$3,000.00         | \$.30                   | 10,000.00          |
| Hanger  | ceiling      | \$15,200.00        | \$1.90                  | 8,000              |
|         | walls        | \$9,620.00         | \$1.85                  | 5,200              |
|         | floor        | \$2,400.00         | \$.30                   | 8,000              |
| Dock    | ceiling      | \$2,850.00         | \$1.90                  | 1,500              |
|         | walls        | \$11,000.00        | \$1.85                  | 2,200              |
|         | floor        | \$3,000.00         | \$.30                   | 1,500              |
| Storage | ceiling      | \$3,562.00         | \$1.90                  | 1,875              |
|         | walls        | \$2,775.00         | \$1.85                  | 1,500              |
|         | floor        | \$562.50           | \$.30                   | 1,875              |
|         | all ceilings | \$116,612          | - Hanger                | \$101,412.00       |
|         | walls        | \$46,065           | - Hanger                | \$36,445.00        |
|         | floors       | <u>\$36,412.50</u> | - Hanger                | <u>\$34,012.50</u> |
|         |              | \$199,089.50       |                         | \$171,869.50       |

8. On or about November 14, 2001, ICP and Mr. Steele entered into an Agreement for Contracted Services ("the Agreement"), pursuant to which ICP agreed to pay Mr. Steele \$172,620, including an advance payment of \$30,000 and Mr. Steele agreed to perform surface preparation and painting work defined in documents ("the Specifications") attached to the Agreement. A true and correct copy of the Agreement (including the Specifications) is attached hereto as Exhibit C and is incorporated by reference as if fully set forth herein.

9. The Agreement did not specify all of the areas to be prepared and painted and did not contain an integration clause or any clause requiring amendments to the Agreement to be in writing.

10. The Specifications provided at Section 3.2.A that:

All surfaces to be treated shall be clean and dry [ . . . ] Metal surfaces shall be wire brushed, removing all rust scale, and shall be thoroughly sanded clean and touched up to match the priming coat. In addition to the foregoing, all surfaces

shall be prepared in strict accordance with the recommendations of the manufacturer of the material to be applied. New galvanized steel will receive a phosphate chemical wash or detergent to remove all oil, grease, etc. from surface to be painted.

11. The Specifications provided at Section 3.3.B that “[t]he Contractor [Mr. Steele] shall be fully responsible for the proper execution and performance of the work described herein.”

12. The “FACILITY CLEANING SCOPE OF WORK” section of the Specifications provided:

1. Contractor shall clean all joist, bottom of metal roof deck, beams and columns using whatever means applicable to scarify and remove the initial grime. (i.e., wire gloves, etc.)
2. Contractor shall apply chemical cleaning agent to existing joist, bottom of metal roof deck, beams and columns.
3. Power wash foamed area to a collection area to gather.

13. On March 27, 2002, Mr. Steele faxed to ICP a “Job Change” description, dated March 25, 2002, which identified the “JOB#” as “DuBois – contracted 11-14-2001” and stated as follows in handwriting:

Change in painting materials –(ceiling)  
\* All materials paid by ICP direct to  
Sherwin – Williams  
Ceiling labor – cleaning, prime, finish coat  
\$75,000 - \$30,000 dep. = \$45,000 Bal.  
  
(if wanted) 2<sup>nd</sup> finish coat \$25,000.00  
Both total \$70,000

A copy of the March 27, 2002 fax (“the Fax”) is attached hereto as Exhibit D and is incorporated by reference as if fully set forth herein.

14. The fax further indicated that "payment" would be "as before," "Total: \$45,000 1 finish coats" or "\$75,000 2 finish coats." The Fax contained a line for signature for acceptance but it was never signed by ICP.

15. On or about April 5, 2002, the Agreement was amended in writing such that, inter alia, the total contract price was reduced to \$70,000 and the scope of work was reduced.

16. The handwritten document memorializing the April 5, 2002 amendment of the Agreement, which was initialed by Dennis Raybuck on behalf of ICP and by Mr. Steele on his own behalf, is attached hereto as Exhibit E and is incorporated by reference as if fully set forth herein. That handwritten document sets forth the following:

|  |                  |  |
|--|------------------|--|
| My price was \$1.90 per. sq. ft.             | 50,000 sq ft     | \$95,000.00  |
| \$30,000.00 was payed [sic] at start in Nov. |                  | -\$30,000.00   |
|  |                  | \$65,000.00  |
| Minus Price of Paint in spec.                | 1 coat Primer    | -\$11,010.00   |
|  | 2 coats Finish   | -\$16,852.00   |
| Amount of Labor due                          | 1 coat Macropoxy | \$37,138.00  |
|  | 2 coat Epoxy     |  |
| Job material change                          |                  | NET +  |
| ? Extra Labor for Using Epoxy's [sic]        |                  | Ing.   |
| Lews cover's [sic]                           |                  | \$40,000.00  |
| Paper suit's [sic]                           |                  | [initials DVR and DNS<br>overlaying \$40,000.00 above] |

17. Mr. Steele did not clean and scrape the areas to be painted as required by the Agreement.

18. On or about April 18, 2002, Mr. Steele represented to ICP that the cleaning portion of the work was complete and that he was ready to move on to painting.

19. ICP terminated the contract on or about April 19, 2002, based upon Mr. Steele's multiple breaches and total breach of the Agreement.

20. The work that Mr. Steele performed for ICP was worthless and had to be completely redone.

21. In addition to the extremely poor quality of the work Mr. Steele provided, Mr. Steele also used inadequate equipment, inadequately supervised his workers, employed unsuitably young workers, and failed to abide by the reasonable work schedule that was requested by ICP and to which Mr. Steele had agreed.

22. In disregard of the agreed work hours, Mr. Steele performed work at times when ICP had no one on site, presumably to avoid having anyone observe his poor quality work.

#### **COUNT I – BREACH OF CONTRACT**

23. The averments of paragraphs 1 through 22 above are incorporated by reference as if fully set forth herein.

24. Based on the conduct described above, Mr. Steele breached the Agreement.

25. Because of Mr. Steele's breach of contract, ICP has suffered damages of at least \$30,000.

WHEREFORE, Plaintiff International Custom Products, Inc. requests that this Court enter judgment in its favor and against Defendant Mr. Steele in the amount of at least \$30,000, plus interest and costs, and award such other relief as this Court may deem proper.

#### **COUNT II – UNJUST ENRICHMENT**

26. The averments of paragraphs 1 through 22 above are incorporated by reference as if fully set forth herein.

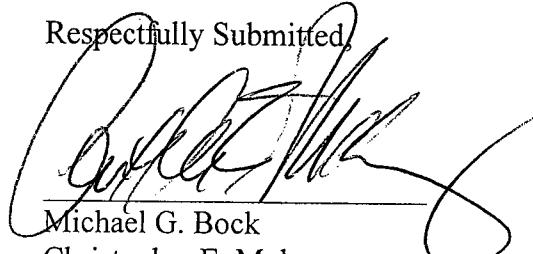
27. Based on the facts described above, Mr. Steele would be unjustly enriched if he were permitted to retain the \$30,000 paid to him as an advance for services he never performed and/or performed so poorly as to provide ICP no value in return.

28. Thus, Mr. Steele has been unjustly enriched by an amount of at least \$30,000 and should be required to return the \$30,000 advance, plus interest.

WHEREFORE, Plaintiff International Custom Products, Inc. requests that this Court enter judgment in its favor and against Defendant Mr. Steele in the amount of at least \$30,000, plus interest and costs, and award such other relief as this Court may deem proper.

January 11, 2003

Respectfully Submitted,

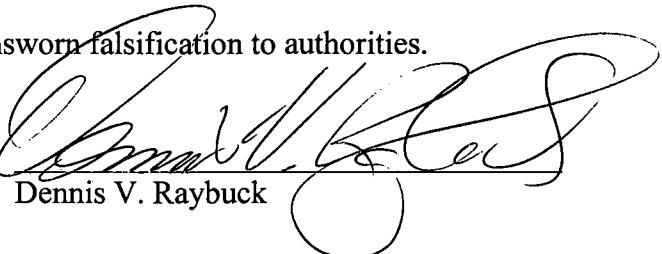


Michael G. Bock  
Christopher E. Mohney  
Gregory H. Teufel

## VERIFICATION

I am President of International Custom Products, Inc., and I am authorized to sign this verification on its behalf. I have read the foregoing complaint and reviewed the exhibits attached thereto and the allegations contained therein. To the best of my knowledge, information and belief, those allegations are true. I understand that I make this verification subject to the penalties of 18 Pa. Cons. Stat. § 4904, regarding unsworn falsification to authorities.

Date: January 14, 2003

  
Dennis V. Raybuck

FROM

DAVID R STEELE  
**PAINTING & SANDBLASTING**  
 RD #1 BOX 310  
 Falls Creek, PA 15840-9115

## Proposal

Proposal No.

Sheet No.

Date 10-17-01

(814) 375-1045

## Proposal Submitted To

## Work To Be Performed At

Name Webber, Smith and International Color  
 Street 1957 William Penn Way with 20 Products  
 City Lancaster  
 State PA  
 Telephone Number 717-291-2266

Street Old McDowell Plant  
 City Dubois  
 State PA  
 Date of Plans  
 Architect

We hereby propose to furnish all the materials and perform all the labor necessary for the completion of Stiles Painting will clean and paint ceiling of Warehouse, staging, Hangers, dock, and storage areas. This will be done for 1.91 per sq. ft. The walls will be done in these areas for 1.92 per sq. ft. Stiles Painting will provide labor and material for job completion. Stiles will not provide the heat and has questioned this time on completion is 2 to 3 months. Start date mid. Nov. or later

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of Dollars (\$ per sq. ft.).  
 with payments to be made as follows:

1/4 of the area at start of job - 1/4 at half way - 1/4 at 3/4 mark  
1/4 will be in 15 days of job finish (same on ceiling or walls)

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by will send copy w/ bid being given  
(service continuing)

Respectfully submitted

David R. Steele

Per \_\_\_\_\_

Note — This proposal may be withdrawn by us if not accepted within \_\_\_\_\_ days

## ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Accepted \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

EXHIBIT

Tables

A

LITHO IN U. S. A.

## PAINTING &amp; SANDBLASTING

RD # BOX 310  
Falls Creek PA 15840-9115

|              | <i>cost</i>            | PRICE Per sq. Ft.         | sq. ft. of Area      |
|--------------|------------------------|---------------------------|----------------------|
| warehouse    | ceiling - \$ 76,000.00 | \$ 1.90                   | 40,000.00            |
|              | walls - 18,500.00      | \$ 1.85                   | 10,000.00            |
|              | floor - 30,000.00      | \$ .75 - new Pitt sq. ft. | 40,000.00            |
| staging      | ceiling - \$ 19,000.00 | \$ 1.90                   | 10,000.00            |
|              | walls 11,100.00        | \$ 1.85                   | 6,000.00             |
|              | floor 3,000.00         | \$ .30                    | 10,000.00            |
| banger       | ceiling \$ 15,200.00   | \$ 1.90                   | 8,000                |
|              | walls 9,620.00         | \$ 1.85                   | 5,200                |
|              | floor 2,400.00         | \$ .30                    | 8,000                |
| fork         | ceiling \$ 2,850.00    | \$ 1.90                   | 1,500                |
|              | walls \$ 4,070.00      | \$ 1.85                   | 2,200                |
|              | floor \$ 450.00        | \$ .30                    | 1,500                |
| storage      | ceiling \$ 3,562.00    | \$ 1.90                   | 1,875                |
|              | walls \$ 2,775.00      | \$ 1.85                   | 1,500                |
|              | floor \$ 562.50        | \$ .30                    | 1,875                |
| all ceilings | \$ 116,612             | - Hanger                  | \$ 101,412.00        |
| walls        | \$ 46,065              | - Hanger                  | \$ 36,445.00         |
| floors       | <u>\$ 36,412.50</u>    | - Hanger                  | <u>\$ 34,012.50</u>  |
|              | <u>\$ 199,089.50</u>   |                           | <u>\$ 171,869.50</u> |

EXHIBIT



**INTERNATIONAL CUSTOM PRODUCTS, INC.**  
**IMPORTERS • EXPORTERS • MANUFACTURERS • DISTRIBUTORS**

302 W. WASHINGTON AVE., P.O. BOX 527A, DUBOIS, PA 15801 (USA)  
TELEPHONE (814) 375-9600

**AGREEMENT FOR CONTRACTED SERVICES**

This AGREEMENT is made as of the 14 nd day of November, 2001

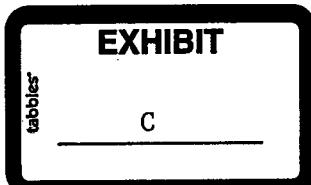
Between *International Custom Products, Inc./OWNER*

And the *Steele's Painting and Sandblasting/CONTRACTOR*

The PROJECT is: Specialty Cleaning and Painting

The OWNER and CONTRACTOR agree as set forth herein

1. The WORK SCOPE of this contract is, (refer to the attached schedule for details on the work scope. )
2. The DATE of commencement shall be December 3, 2001.  
The Contractor shall achieve SUBSTANTIAL completion no later than January 18, 2002.
3. The OWNER shall pay the CONTRACTOR IN US DOLLARS for the CONTRACTOR performance of the AGREEMENT. The CONTRACT SUM of \$173,420.00, subject to any additions or deductions as provided and agreed to by the OWNER.
4. PAYMENT AMOUNTS, if agreed to, will be made based upon completion of the WORK SCOPE. The OWNER agrees to an advance payment of \$30,000.00 to the CONTRACTOR two weeks prior to the commencement date (as stated above) of this agreement. Installment payments will be made based upon completion of work by the CONTRACTOR. Payments will be made on Friday following the CONTRACTOR submitting to the OWNER an invoice.
5. The OWNER shall make a FINAL PAYMENT, constituting a minimum of \$30,000.00 or the entire unpaid balance of the CONTRACT SUM not to exceed the total CONTRACT SUM (as stated above), to the CONTRACTOR when the contract work has been fully performed by the CONTRACTOR and approved by the OWNER.



6. Changes in the AGREEMENT for CONTRACTED SERVICES

Changes in the work may be accomplished after execution of this AGREEMENT and without invalidating the AGREEMENT. A change order shall be based upon agreement among the OWNER, CONTRACTOR and ARCHITECT/ENGINEER.

7. Risk Management

Insurance Coverage: The Contractor shall purchase from and maintain in a company lawfully authorized to do business in the jurisdiction in which the project is located. The Contractor shall carry the type and level of coverage acceptable to the OWNER. Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the work.

(See attached Insurance Schedule)

8. Termination

The OWNER may terminate this AGREEMENT if the CONTRACTOR, (1) repeatedly refuses to supply enough properly skilled workers or proper materials; (2) fails to make payment to subcontractors for materials or labor in accordance with their respective agreements between the CONTRACTOR and the subcontractors, (3) persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or (4) otherwise is guilty of substantial breach of a provision of this AGREEMENT. If the unpaid balance of the AGREEMENT sum exceeds costs of finishing the work, including the ARCHITECT'S services and expenses, such excess shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to the OWNER.

The OWNER may, without cause, order the CONTRACTOR in writing to suspend, delay or interrupt the work in whole or in part for such a period of time as the OWNER may determine. An adjustment shall be made for increases in the cost of performance of the suspension, delay or interruption.

9. THE CONTRACT DOCUMENTS, except for Modifications issued after execution of this contract, are enumerated below:

OWNER

  
Signature Date  
11/4/01

Kenneth J. Mitchell CFO  
(Printed Name and Title)

CONTRACTOR

  
Signature Date  
11/8/2001

David R. Steele OWNER  
(Printed Name and Title)

**WEBBER/SMITH Associates, Inc.**  
**Lancaster, Pennsylvania**

**DIVISION 9 - FINISHES**  
**SECTION 09900 - PAINTING**

**1 - GENERAL**

**1.1 SUMMARY**

- A.** Work required under this Section shall include the furnishing of all materials, labor, tools and equipment to prepare and paint all interior and exterior surfaces as specified herein or as called for on the Drawings.

**1.2 SUBMITTALS**

- A. Brochures:** Complete manufacturers brochures shall be submitted. Brochures shall be marked up to indicate all products to be employed in the work in order that a proper evaluation can be made of the materials, methods, assemblies and construction to be provided.
- B. Samples:** Upon approval, the Contractor shall furnish color charts of the approved paint for owner's selection. When requested, he shall prepare samples of various finishes for approval.
- C. Mockups:** A field sample on a section of wall or hardboard panel shall be prepared for each type and color of finish specified. Make samples not less than 10 square feet for brush work, 100 square feet for spray painting. The Engineer reserves the right to require two additional samples of each type. The Contractor shall request a review by Engineer on first completed room, color scheme, special items, etc., which shall serve as project standard after approval.

**WEBBER/SMITH Associates, Inc.  
Lancaster, Pennsylvania**

**1.3 DELIVERY, STORAGE AND HANDLING**

- A. All materials for the work of this Section shall be delivered, stored and handled so as to preclude damage of any nature. Manufactured materials shall be delivered and stored in their original containers, plainly marked with the product's and manufacturer's name. Materials in broken containers or in packages showing watermarks or other evidence of damage, shall not be used and shall be removed from the site.
- B. All materials of this Section shall be stored in spaces provided and designated by the Construction Manager in a manner to meet the requirements of the pertinent codes and fire regulations. When not in use, such spaces shall be kept under lock and inaccessible to those not employed under this Section. Each space shall be provided with a two and one-half gallon fire extinguisher bearing the label of the National Board of Fire Underwriters.

**1.4 PROJECT REQUIREMENTS**

- A. The Contractor under this Section shall verify site conditions to assure that the requirements for installation procedures conform to the following:
  - 1. Temperature in spaces to receive painter's finish shall be maintained at not less than 50°F during installation.
  - 2. Adequate ventilation shall be maintained for the drying of paint and the prevention of condensation and mildew.
  - 3. Do not apply finish in areas in which dust is being generated.
- B. Exterior work shall be performed only when temperatures are above 40°F except that work shall not be undertaken when combinations of environmental conditions would cause the paint to dry too rapidly. Exterior painting shall not commence when rain is forecast within 12 hours.

**2 - PRODUCTS**

**2.1 MANUFACTURER**

- A. Unless noted otherwise, all paint as specified herein shall be as manufactured by the Sherwin-Williams Company, or Approved Equal. All paints on this project shall be acceptable to the USDA. Color selection will be by the Owner.

**WEBBER/SMITH Associates, Inc.**  
**Lancaster, Pennsylvania**

**2.2 MATERIALS**

**A. Paint**

1. Masonry:
  - a. Interior: Primer Coat - Heavy-duty "Block Filler"; finish coat, catalyzed epoxy enamel "Tile Clad II Epoxy" (or "Water Based Catalyzed Epoxy" in California).
  - b. Exterior: Primer Coat - CMU Heavy-duty "Block Filler"; finish coat, latex "A100" [flat, satin, gloss].
2. Hollow Metal Doors and Frames: Primer coat (shop plus field spot) - "DTM Primer/Finish"; finish coat - acrylic latex "Metalatex Semi-Gloss".
3. Galvanized Steel Cladding at Doors: Acrylic latex "Metalatex Semi-Gloss".
4. Handrails: Primer Coat - "Kem Kromik Metal Primer"; finish coat - alkyd enamel "Industrial Enamel" (or "Kem Bond HS" and "Industrial Enamel HS" in California).
5. Structural Steel and other Misc. Metals: Primer coat (shop plus field spot) - "Kem Kromik Metal Primer" ("Kem Bond HS" in California); finish coat, acrylic latex "Metalatex Semi-Gloss".
6. Existing Insulated Galvanized Metal Panels and Miscellaneous Metal: Primer coat - DTM Bonding Primer - B66A50, 2 mils; intermediate coat - DTM Bonding Primer - B66A50, 2 mils; finish coat - Metalatex SG - B42 Series, 2.5 mils dry film thickness; or Primer coat - 215 Rust Screen (1.5 mils dry film thickness); intermediate coat - 1610 acrylic industrial coating (2.0 mils dry thickness); finish coat - 3410 Acri-Shield Semi-Gloss (2.5 mils dry film thickness), all as manufactured by Porter International, or Approved Equal.
7. Existing Exterior Masonry: Primer coat - 1610 acrylic industrial coating (2.0 mils dry film thickness); finish coat - 3410 Acri-Shield, all as manufactured by Porter International, or Approved Equal.
8. Gypsum Board
  - a. Latex painted: Primer coat - "Pro Mar Latex Primer"; finish coat - "Pro Mar Latex Flat Wall Paint".
  - b. Epoxy painted: Primer coat - "Pro Mar Latex Primer", finish coat - "Tile Clad II Epoxy" (or "Water Based Catalyzed Epoxy" in California).
9. Wood Doors and Trim

**WEBBER/SMITH Associates, Inc.  
Lancaster, Pennsylvania**

- a. Painted: Primer coat - "Pro Mar 200 Alkyd Enamel Undercoater" ("Wall and Wood Primer VOC" B49WZ2 in California); finish coat - "Pro Mar 200 Latex Eggshell Enamel".
- b. Varnished: Primer coat - "Oil Base Varnish" reduced with one pint mineral spirits per gallon; finish coat - "Oil Base Varnish". For stained wood - "Oil Based Stain"; with finish coat - "Oil Base Varnish".

**B. Materials for general use, mixing, and tinting shall be as follows:**

1. Raw linseed oil shall conform to the Standard Specifications of the ASTM C-234; current edition.
2. Boiled linseed oil shall conform to the Standard Specifications of the ASTM D-260; current edition.
3. Turpentine shall conform to the Standard Specifications of the ASTM D-13; current edition, for pure gum spirits distilled.
4. Colors shall be pure, non-fading pigments, finely ground in linseed oil.

**C. Acid Etch: Existing insulated galvanized metal panels: GALVAPREP 5 as manufactured by Porter International, or Approved Equal.**

### **3 - EXECUTION**

#### **3.1 EXAMINATION**

- A.** This Contractor shall inspect all surfaces, areas and other contingent construction in or to which his work is to be installed and insure himself that they are in proper condition to receive the work to be performed under this Section. The Contractor shall notify the Engineer in writing, before any work is installed, of any condition requiring correction. Failure to make such a report shall be construed as acceptance of the existing conditions and the responsibility to provide an acceptable installation.

#### **3.2 PREPARATION OF SURFACES/PROTECTION**

- A.** All surfaces to be treated shall be clean and dry, and no painting shall be done in wet or freezing weather. Metal surfaces shall be wire brushed, removing all rust scale, and shall be thoroughly sanded clean and touched up to match the priming coat. In addition to the foregoing, all surfaces shall be prepared in strict accordance with the recommendations of the manufacturer of the material to be applied. New galvanized steel will receive a phosphate chemical wash or detergent wash to remove all oil, grease, etc. from surface to be painted.
- B.** All existing exterior walls shall receive a high pressure detergent wash.
- C.** Existing metal wall panels to be painted shall be acid etched in accordance with the manufacturers printed instructions.
- D.** Protect finished surfaces and equipment not being painted with masking tape, canvas dropcloth, polyethylene sheets or other suitable means as approved by the Engineer. Items such as lighting switch covers, fixture canopies and door handles may be temporarily removed, carefully stored and replaced after painting instead of being covered.

#### **3.3 INSTALLATION**

- A.** The work of this Section shall be coordinated with that of associated trades.
- B.** The Contractor shall be fully responsible for the proper execution and performance of the work described herein.
- C.** All interior and exterior surfaces to be exposed in the final work, except prefinished and other items, materials, and surfaces not specifically indicated or specified to be left unfinished, shall be painted. The Contractor shall refer to all other Sections of these Specifications for items to be primed, shop coated, or finished as part of the work of said Sections.

#### **3.4 APPLICATION**

**WEBBER/SMITH Associates, Inc.  
Lancaster, Pennsylvania**

- A. Paint and finishing materials shall be free from skins, lumps, or any foreign matter when used, and pigment fillers and other materials shall be evenly worked out and allowed to dry before subsequent coats are applied, and each coat of paint shall be a different tone from the preceding, when required for identification. Finishing coat or coats shall be the exact shade texture approved on the job and from samples submitted. Finished work shall be free from runs and sags, defective brushing, and clogging of angles. Where required or necessary, bare or abraded spots in shop coat shall be touched up by this Contractor before applying final coats, using the same material as used in the shop coat, or other material when approved by the Engineer.
- B. All materials shall be mixed and applied in accordance with the manufacturer's recommendations unless specified otherwise herein.
- C. Materials shall be applied with suitable brushes, rollers and spraying equipment. Keep application equipment clean, dry and free from contaminants. Spraying must be approved by the Engineer.
- D. Rate and method of application, drying time between coats, and finished dry mil thickness shall be strictly in accordance with manufacturer's recommendations. Unless specifically recommended otherwise by the manufacturer, two-coat applications shall have a minimum 3-1/2 dry mil thickness, three-coat applications minimum 5 dry mil thickness. Unless hereinafter noted, paint applications shall be a minimum of three (3) coats.
- E. Do not apply first coat until the moisture content of the surface is within the limitations recommended by the paint manufacturer. Test with a moisture meter if requested by the Engineer.
- F. Do not apply additional coats until the Owner or the Engineer has inspected previous coats. Only inspected coats will be considered in determining the number of coats applied.
- G. Sand and dust between each coat to remove defects visible from a distance of 5 feet. Make edges of paint adjoining other materials or colors clean and sharp with no overlapping. Paint surfaces visible through grilles one coat flat black.
- H. Finish coats shall be smooth, free of brush marks, streaks, laps or pile up of paints, and skipped or missed areas. Refinish the whole wall if unacceptable finish is extensive or of such a nature that it cannot be repaired by normal touch-up.

**3.5 CLEANING**

- A. At the completion of all other project work, all paint work shall be touched up and restored where damaged or defaced and the entire work left free from blemishes.

**WEBBER/SMITH Associates, Inc.  
Lancaster, Pennsylvania**

**B. All work adjacent to operations under this Section shall be inspected for damage and stains, and repaired or cleaned prior to the completion of the work.**

**3.6 SCHEDULES**

**A. Metal Work, Interior and Exterior:** All exposed surfaces including metal railings, metal door frames, metal doors and exposed steel shall be painted one prime coat and two full finish coats.

**B. Epoxy Finish**

1. Where epoxy finishes are indicated, surfaces shall be given one full coat of the epoxy paint and one finish coat of clear glaze semi-gloss epoxy.
2. Unit masonry surfaces shall receive a filler coat prior to the application of finish coats.
3. Wallboard surfaces shall receive a primer coat of latex quick dry prime seal.

**C. Gypsum Board:** All exposed surfaces shall be painted one primer coat and two finish coats.

**D. Woodwork:** All exposed surfaces including interior cabinet surfaces shall be painted one primer coat and two finish coats.

**WEBBER/SMITH Associates, Inc.**  
**Lancaster, Pennsylvania**

**E. Concrete Floors and Concrete Walls**

- 1. All surfaces to receive paint shall be painted two coats.**
- 2. Wall surfaces shall be given one coat of filler prior to application of finish coats.**

**END OF SECTION**

## **FACILITY CLEANING SCOPE OF WORK**

1. Contractor shall clean all joist, bottom of metal roof deck, beams and columns using whatever means applicable to scarify and remove the initial grime. (i.e. wire gloves, etc.)
2. Contractor shall apply penetrating chemical cleaning agent to existing joist, bottom of metal roof deck, beams and columns.
3. Power wash foamed area to a collection area to gather.
4. Contractor shall apply penetrating chemical cleaning agent to existing walls.
5. Power wash foamed area to a collection area to gather.
6. Apply a tinted primer coat (per specifications supplied to contractor during bidding) to all walls, joist, bottom of metal roof deck, beams and columns.
7. Apply (2) coats of paint (per specifications supplied to contractor during bidding) to all walls, joist, bottom of metal roof deck, beams and columns.
8. Contractor shall remove all trash, debris and excess grease from the existing slab.
9. Contractor shall dispose of the waste in accordance with all local, state and federal regulations.
10. Contractor shall apply concrete penetrating chemical cleaning agent to existing floor surface.
11. Using a floor sweeper with wire brush heads, scour entire area for +/-30 minutes.
12. Power wash foamed area to a collecting area to gather.
13. The contractor shall remove approximately 1" of grease and oil from the existing concrete floor. (Core samples of the concrete in various areas will be taken upon completion)
14. Dispose of wastewater in accordance with all local, state and federal regulations.
15. Provide detailed waste characteristics profile daily to show compliance with the effluent standards of Sandy Township and the City of Dubois.
16. All treated wastewater from joist, bottom of metal roof deck, beams, columns, walls and floor slab shall be discharged to sanitary sewer system.

## **SHOP DRAWINGS REQUIRED**

Contractor shall supply cut sheets and specifications to Engineer for approval prior to any product is purchased.

- Tinted Primer
- Paint
- Penetrating Chemical Agent
- Concrete Penetrating Chemical Agent
- Wastewater Disposal System

Ken Harris

11000  
375-1045DAVID R. STEELE PAINTING

Mailing address: RR 1 Box 310, Falls Creek, Pa. 15840-9115

Phone (814) 285-8706 Fax (814) 375-9891

DATE: March 25, 2002 JOB# DuBois - contracted 11-14-2001

TO: I.C.P. - Att: Denny &amp; Ken M.

| Description                                  | Job Change   |
|--|--|
|  | Change in painting materials (ceiling)                   |
| *  | All materials paid by FCP direct to S. Yerush - Williams |
| Ceiling labor - cleaning, prime, finish coat | \$75,000 - \$30,000 dep. = \$45,000 Bal.                 |
| (if wanted) 2nd finish coat \$25,000.00      |  |
|  | Both. total \$70,000                                     |
|  |  |
|  |  |
|  |  |
|  |  |

Any deviation from above specifications involving extra costs, will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, weather, or delays beyond our control. WE are insured, certificate available upon request.

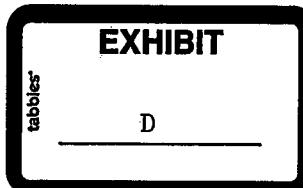
PAYMENT: as before \$45,000 1 finish coats  
 Total: \$70,000 2 finish coats

Submitted by: \_\_\_\_\_

Accepted by: \_\_\_\_\_

If quote is accepted please return a signed copy.

Thank you!



My price was \$1.90 per. Sq. Ft. ~~50,000 sq ft~~ \$95,000.00

\$30,000.00 was paged at start in Nov. ~~\$30,000.00~~

~~\$65,000.00~~

Minus Price of Paint in spec. 1 coat Primer - \$11,010.00  
2 coats Finish - \$16,852.00

Amount of Labor due 1 coat Macropoxy  
2 coat Epoxy

~~\$37,138.00~~

Job material change

? EXTRA LABOR FOR USING EPOXY'S

LENS COVERS  
PAPER SUITS

~~110000~~  
~~110000~~  
~~110000~~

EXHIBIT

tabbles

E

4/2/03 Document  
Reinstated/Reissued to Sheriff/Attorney  
for service.  
William A. Shaw  
Deputy Prothonotary

FILED

JAN 21 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

INTERNATIONAL CUSTOM  
PRODUCTS, INC.

Plaintiff

v.

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING

Defendant

Civil Action No. 2003 - 81 - C.D.

Type of Pleading: Acceptance of  
Service

Filed on Behalf of: Plaintiff

Counsel of Record for this party:

Michael G. Bock, Esquire  
Pa. I.D. 62360  
Gregory H. Teufel, Esquire  
Pa. I.D. 73062  
Schnader Harrison Segal &  
Lewis, LLP  
Suite 2700  
Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222  
(412) 577-5289

Christopher E. Mohney, Esq.  
Pa. I.D. 63494  
90 Beaver Drive  
Suite 201 A  
DuBois, PA 15801  
(814) 375-1044

**FILED**

**MAR 25 2003**

**William A. Shaw  
Prothonotary**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

INTERNATIONAL CUSTOM : No. 2003-81-C.D.  
PRODUCTS, INC. :

Plaintiff :

v.

DAVID R. STEELE, D/B/A STEELE'S :  
PAINTING AND SANDBLASTING :

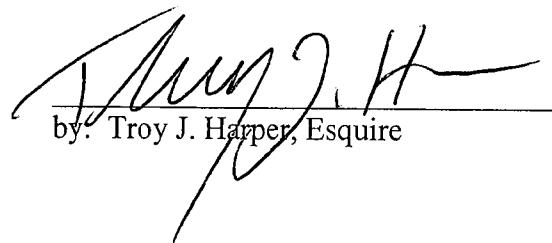
Defendant :

**ACCEPTANCE OF SERVICE**

I, Troy J. Harper, Esquire, of Dennison, Dennison & Harper, attorneys for the defendant David R. Steele, d/b/a Steele's Painting and Sandblasting in the above-captioned matter, do hereby accept service of the Complaint on behalf of defendant David R. Steele, d/b/a Steele's Painting and Sandblasting on this 13<sup>th</sup> day of March, 2003.

Respectfully,

DENNISON, DENNISON & HARPER

  
by: Troy J. Harper, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION - LAW

|  |   |   |
|--|---|---|
| INTERNATIONAL CUSTOM<br>PRODUCTS, INC.,                          | : | NO. 2003-81- C.D.   |
| PLAINTIFF  | : | TYPE OF CASE: CIVIL   |
| VS.  | : | TYPE OF PLEADING: PRAECIPE TO<br>REINSTATE COMPLAINT              |
| DAVID R. STEELE, D/B/A<br>STEELE'S PAINTING AND<br>SANDBLASTING, | : | FILED ON BEHALF OF: PLAINTIFF                                     |
| DEFENDANT  | : | COUNSEL OF RECORD:  |
|  | : | MICHAEL G. BOCK, ESQUIRE<br>Pa. I.D. 62360                        |
|  | : | GREGORY H. TEUFEL, ESQUIRE<br>Pa. I.D. 73062                      |
|  | : | Schnader Harrison Segal & Lewis, LLP<br>Suite 2700                |
|  | : | Fifth Avenue Place<br>120 Fifth Avenue                            |
|  | : | Pittsburgh, PA 15222<br>(412) 577-5289                            |
|  | : | CHRISTOPHER E. MOHNEY, ESQUIRE<br>SUPREME COURT NO.: 63494        |
|  | : | 90 BEAVER DRIVE, SUITE 201A<br>DUBOIS, PA 15801<br>(814) 375-1044 |

**FILED**  
01/22/04 11:00  
2cc to odg.  
APR 09 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION - LAW

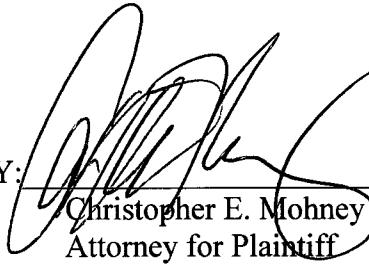
|                        |   |                     |
|------------------------|---|---------------------|
| INTERNATIONAL CUSTOM   | : | NO. 2003-81 - C.D.  |
| PRODUCTS, INC.,        | : |                     |
| PLAINTIFF              | : | TYPE OF CASE: CIVIL |
| VS.                    | : |                     |
| DAVID R. STEELE, D/B/A | : |                     |
| STEELE'S PAINTING AND  | : |                     |
| SANDBLASTING,          | : |                     |
| DEFENDANT              | : |                     |

**PRAECIPE TO REINSTATE COMPLAINT**

TO: PROTHONOTARY OF CLEARFIELD COUNTY

Kindly reinstate the above captioned case on behalf of the Plaintiff.

BY:

  
Christopher E. Mohney  
Attorney for Plaintiff

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

## INTERNATIONAL CUSTOM PRODUCTS, INC.

Plaintiff,

V.

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING.

Defendant.

) CIVIL ACTION No. 03-81-CD  
)  
) **NOTICE OF PRAECIPE TO ENTER  
DEFAULT JUDGMENT**  
)  
) Filed on behalf of:  
) Plaintiff, International Custom Products, Inc.  
)  
) Counsel of record for this party:  
)  
) Michael G. Bock, Esquire  
) Pa. ID. 62360  
) Gregory H. Teufel, Esquire  
) Pa. ID. 73062  
) Schnader Harrison Segal & Lewis LLP  
) Suite 2700, Fifth Avenue Place  
) 120 Fifth Ave.  
) Pittsburgh, PA 15222  
) (412) 577-5289  
)  
) Christopher E. Mohney, Esq.  
) Pa. I.D. No. 63494  
) 90 Beaver Drive, Suite 201A  
) DuBois, PA 15801  
) (814) 375-1044

**FILED**

APR 15 2003  
• 11:45 AM

William A. Shaw  
Prothonotary

NO C/C ~~622~~

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

INTERNATIONAL CUSTOM PRODUCTS, INC. : CIVIL ACTION No.

Plaintiff, :  
vs. :  
DAVID R. STEELE, D/B/A STEELE'S :  
PAINTING AND SANDBLASTING, :  
Defendants. :  
:

**NOTICE OF PRAECIPE TO ENTER JUDGMENT BY DEFAULT**

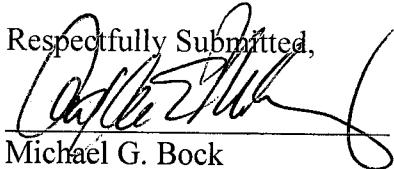
**TO:** David R. Steele AND c/o Troy J. Harper, Esq.  
d/b/a Steele's Painting and Sandblasting Dennison, Dennison & Harper  
RD #1, Box 310 293 Main St.  
Falls Creek, Pennsylvania 15840-9115 Brookville, PA 15825

Date of Notice: April 11, 2003

**IMPORTANT NOTICE**

**YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:**

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641 Ext. 50-51

Respectfully Submitted,  
  
Michael G. Bock  
Christopher E. Mohney  
Gregory H. Teufel

April 11, 2003

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Notice** has been served this 11 day of April, 2003, by United States, first-class mail, postage prepaid, on the following:

David R. Steele  
d/b/a Steele's Painting and Sandblasting  
RD #1, Box 310  
Falls Creek, Pennsylvania 15840-9115

AND c/o Troy J. Harper, Esq.  
Dennison, Dennison & Harper  
293 Main St.  
Brookville, PA 15825



COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

INTERNATIONAL CUSTOM  
PRODUCTS, INC.,

Plaintiff,

vs.

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING,  
Defendant.

CIVIL ACTION - LAW

Number 2003 - 81 C.D.

Type of Case: Civil Division

Type of Pleading: Appearance

Filed on behalf of: Defendant

Counsel of Record for this Party:

Troy J. Harper  
Supreme Court Number: 74753

John C. Dennison, II  
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

**FILED**

APR 21 2003

William A. Shaw  
Prothonotary

INTERNATIONAL CUSTOM  
PRODUCTS, INC.,

Plaintiff,

vs.

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING,  
Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\*  
\* Civil Action - Law  
\*  
\*  
\* Number 2003 - 81 C.D.

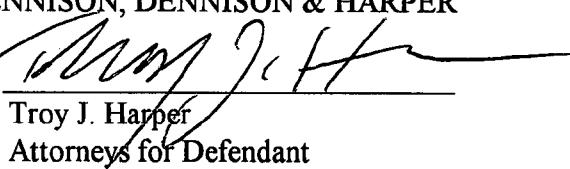
**APPEARANCE**

**TO THE PROTHONOTARY OF CLEARFIELD COUNTY:**

Please enter our Appearance on behalf of the Defendant, DAVID R. STEELE d/b/a  
STEELE'S PAINTING AND SANDBLASTING, in regard to the above entitled matter.

DENNISON, DENNISON & HARPER

By

  
Troy J. Harper  
Attorneys for Defendant

Dated: April 18, 2003

## **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Appearance was served on the  
18<sup>th</sup> day of April, 2003, by United States Mail, First Class,  
Postage Prepaid, addressed to the following:

Christopher E. Mohney, Esq.  
90 Beaver Drive, Suite 210A  
Dubois, Pennsylvania 15801

Gregory H. Teufel, Esq.  
Schnader, Harrison, Segal & Lewis  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, Pennsylvania 15222

DENNISON, DENNISON & HARPER

By   
Troy J. Harper  
Attorneys for the Defendant

FILED

NO  
CC

MAR 18 2003  
AMR 212003  
KEY

William A. Shaw  
Prothonotary

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

INTERNATIONAL CUSTOM  
PRODUCTS, INC.,

Plaintiff,

vs.

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING,  
Defendant.

CIVIL ACTION - LAW

Number 2003 - 81 C.D.

Type of Case: Civil Division

Type of Pleading: Answer, New Matter  
and Counterclaim

Filed on behalf of: Defendant

Counsel of Record for this Party:

Troy J. Harper  
Supreme Court Number: 74753

John C. Dennison, II  
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

**FILED**

APR 21 2003

William A. Shaw  
Prothonotary

INTERNATIONAL CUSTOM  
PRODUCTS, INC.,

Plaintiff,

vs.

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING,  
Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\*  
\* Civil Action - Law  
\*  
\*  
\*  
\* Number 2003 - 81 C.D.

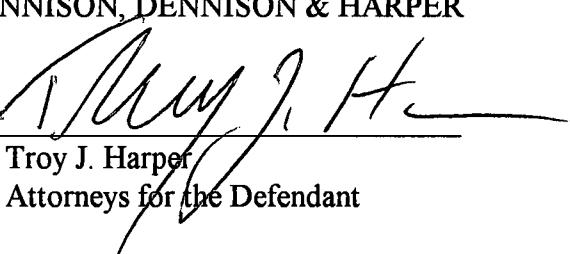
**NOTICE TO PLEAD**

**TO: International Custom Products, Inc:**

You are hereby notified to plead to the within New Matter and Counterclaim within twenty (20) days from service hereof or a default judgment may be entered against you.

DENNISON, DENNISON & HARPER

By

  
Troy J. Harper  
Attorneys for the Defendant

INTERNATIONAL CUSTOM  
PRODUCTS, INC.,

Plaintiff,

vs.

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING,  
Defendant.

\* In the Court of Common Pleas of  
\* Clearfield County, Pennsylvania  
\*  
\* Civil Action - Law  
\*  
\*  
\*  
\* Number 2003 - 81 C.D.

**ANSWER , NEW MATTER AND COUNTERCLAIM**

AND NOW, comes the Defendant, DAVID R. STEELE, D/B/A STEELE'S PAINTING  
AND SANDBLASTING, by his attorneys, Dennison, Dennison & Harper, who file the following  
Answer, New Matter and Counterclaim in response to the Plaintiffs' Complaint:

1. The averments of Paragraph 1 of the Plaintiff's Complaint constitute conclusions of law to which no response is deemed required. To the extent any further response would be deemed required, said averments are denied, and the averments of this Answer, New Matter and Counterclaim are hereby incorporated in response thereto.
2. Admitted.
3. The averment of Paragraph 3 of the Plaintiff's Complaint that David R. Steele was doing business as Steele's Painting and Sandblasting is denied as stated. On the contrary, David R. Steele was doing business as David R. Steele Painting and Sandblasting. The remaining averments of Paragraph 3 are admitted.

4. The averments of Paragraph 4 of the Plaintiff's Complaint constitute conclusions of law, and no response is required.

5. The averments of Paragraph 5 of the Plaintiff's Complaint constitute conclusions of law, and no response is required.

6. The averments of Paragraph 6 of the Plaintiff's Complaint are admitted insofar as David R. Steele d/b/a David R. Steele Painting and Sandblasting submitted a written proposal dated October 17, 2001, to Webber/Smith and International Custom to furnish all of the materials and labor for cleaning and painting of various portions of a building identified as the "Old McDowell Plant." With respect to the specific language of the written proposal, said written document speaks for itself and no further response is required. It is admitted that a copy of said written proposal is attached to the Plaintiff's Complaint as Exhibit A.

7. The averments of Paragraph 7 of the Plaintiff's Complaint are admitted insofar as David R. Steele d/b/a David R. Steele Painting and Sandblasting faxed a handwritten document on or about October 24, 2001, to Webber/Smith and/or ICP and said document contained various information and calculations for square footage of areas to be painted and the price for painting the same. With respect to the specific language of the handwritten document, said document speaks for itself, and no further response is required. It is admitted that a copy of said written proposal with various marks made over some of the information is attached to the Plaintiff's Complaint as Exhibit B.

8. The averments of Paragraph 8 of the Plaintiff's Complaint are admitted insofar as on or about November 14, 2001, ICP and David R. Steele d/b/a David R. Steele Painting and Sandblasting entered into a written contract entitled "Agreement for Contracted Services" and that pursuant to said contract, ICP agreed to pay David R. Steele d/b/a David R. Steele Painting and Sandblasting the sum of \$172,620.00, including an advance payment of \$30,000.00 for painting preparation and painting services. It is denied that David R. Steele d/b/a David R. Steele Painting and Sandblasting agreed to perform said services pursuant to the Specifications attached to the Plaintiff's Complaint as said Specifications were general Specifications submitted to David R. Steele d/b/a David R. Steele Painting and Sandblasting in the bid process, but said Specifications were not specific to the project as bid or the Agreement as entered into.

9. Admitted.

10. With respect to the averments of Paragraph 10 of the Plaintiff's Complaint, said Specifications speak for themselves. By way of additional response, the averments of Paragraph 8 of this Answer are incorporated herein by reference thereto.

11. With respect to the averments of Paragraph 11 of the Plaintiff's Complaint, said Specifications speak for themselves. By way of additional response, the averments of Paragraph 8 of this Answer are incorporated herein by reference thereto.

12. With respect to the averments of Paragraph 12 of the Plaintiff's Complaint, said Specifications speak for themselves. By way of additional response, the averments of Paragraph 8 of this Answer are incorporated herein by reference thereto.

13. The averments of Paragraph 13 of the Plaintiff's Complaint are admitted insofar as on March 27, 2002, David R. Steele faxed a document to ICP which was identified under the Description as a "Job Change". Said document speaks for itself, and no further response is required. It is admitted that a true and correct copy of document is attached to the Plaintiff's Complaint.

14. With respect to the averments of Paragraph 14 of the Plaintiff's Complaint, said document speaks for itself, and no further response is required.

15. Denied as stated. On the contrary, on or about April 5, 2002, a Job Material Change was executed. Said Job Material Change provided for ICP to purchase the paint to be used for the painting of a certain part of the project with a credit for the same from the contract price for that particular area of the project.

16. The averments of Paragraph 16 of the Plaintiff's Complaint are admitted insofar as a copy of the Job Material Change is attached to the Plaintiff's Complaint as Exhibit E and that said document was initialed by Dennis Raybuck on behalf of ICP and David R. Steele on his own behalf. By way of additional response, the averments of Paragraph 15 of this Answer are incorporated herein by reference thereto.

17. Denied. On the contrary, David R. Steele, d/b/a David R. Steele Painting and Sandblasting performed and continued to perform all work required under the Agreement in a workmanlike manner until such time as he was wrongfully discharged from the project by the Plaintiff. Said wrongful discharge resulted in David R. Steele d/b/a David R. Steele Painting and

supervised his workers which were not unsuitably young. In addition, David R. Steele d/b/a David R. Steele Painting and Sandblasting did not agree to a specific work schedule, and the Agreement is silent on any such specific work schedule.

22. Denied. David R. Steele d/b/a David R. Steele Painting and Sandblasting performed work on the project at various times, and said work was available for inspection at any time by the Plaintiff or its representatives and the averments of Paragraph 21 of this Answer are incorporated herein by reference thereto.

#### **COUNT I - BREACH OF CONTRACT**

23. Paragraph 23 of the Plaintiff's Complaint fails to contain any averments of fact and is merely an incorporation clause to which no response is deemed required. To the extent any further response is required, the averments of Paragraphs 1 through 22 of this Answer are incorporated herein by reference thereto.

24. Denied. On the contrary, David R. Steele d/b/a David R. Steele Painting and Sandblasting did not breach the agreement. By way of further response, the averments of Paragraphs 17 through 22 of this Answer are incorporated herein by reference thereto.

25. Denied. On the contrary, David R. Steele d/b/a David R. Steele Painting and Sandblasting did not breach the agreement. By way of further response, the averments of Paragraphs 17 through 22 of this Answer are incorporated herein by reference thereto.

**WHEREFORE**, the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting demands judgment in his favor and against the Plaintiff. **JURY TRIAL DEMANDED.**

**COUNT II - UNJUST ENRICHMENT**

26. Paragraph 26 of the Plaintiff's Complaint fails to contain any averments of fact and is merely an information clause to which no response is deemed required. To the extent any further response is required, the averments of Paragraphs 1 through 25 of this Answer are incorporated herein by reference thereto.

27. Denied. On the contrary, David R. Steele d/b/a David R. Steele Painting and Sandblasting performed all work in a proper and workmanlike manner for which the Plaintiff received a benefit. By way of further response, the averments of Paragraphs 17 through 22 of this Answer are incorporated herein by reference thereto.

28. Denied. On the contrary, David R. Steele d/b/a David R. Steele Painting and Sandblasting performed all work in a proper and workmanlike manner for which the Plaintiff received a benefit. By way of further response, the averments of Paragraphs 17 through 22 of this Answer are incorporated herein by reference thereto.

**WHEREFORE**, the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting, demands judgment in his favor and against the Plaintiff. **JURY TRIAL DEMANDED.**

## **NEW MATTER**

29. At all times material hereto, the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting through its agents, servants and employees performed services under the Agreement in a workmanlike fashion.

30. The Plaintiff, International Custom Products, Inc., breached the Agreement by improperly and wrongful terminating the Agreement and discharging the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting from the project.

31. By wrongfully terminating the Agreement, the Plaintiff prevented the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting from completing the project and performing his duties under the Agreement.

32. The Plaintiff's action is barred by the defense of failure of consideration.

**WHEREFORE**, the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting demands judgment in his favor and against the Plaintiff. **JURY TRIAL DEMANDED.**

## **COUNTERCLAIM**

33. The Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting is an adult individual who resides at R.D. 1, Box 310, Falls Creek, Pennsylvania 15840.

34. The Plaintiff, International Custom Products, Inc., is a corporation organized under the laws of the Commonwealth of Pennsylvania with offices located at Oklahoma-Salem Road,

P.O. Box 527A, Dubois, Clearfield County, Pennsylvania.

35. On or about November 14, 2001, the Defendant David R. Steele d/b/a David R. Steele Painting and Sandblasting and the Plaintiff, International Custom Products, Inc., entered into an Agreement for Contracted Services. A copy of said Agreement for Contracted Services is attached hereto as Exhibit A and made part hereof.

36. Pursuant to said Agreement for Contracted Services, David R. Steele, d/b/a David R. Steele Painting and Sandblasting agreed to perform certain services related to preparing certain surfaces for painting and for painting said surfaces. Said services were to be performed at a location known as the "Old McDowell Plant" in Dubois, Pennsylvania.

37. Pursuant to the Agreement for Contracted Services, International Custom Products, Inc. agreed to pay the sum of \$172,620.00 to David R. Steele d/b/a David R. Steele Painting and Sandblasting for the services outlined in Paragraph 36 of this Counterclaim.

38. Further, pursuant to the Agreement for Contracted Services, International Custom Products, Inc. made an initial payment of \$30,000.00 to David R. Steele d/b/a David R. Steele Painting and Sandblasting.

39. After the execution of the Agreement for Contracted Services, David R. Steele d/b/a David R. Steele Painting and Sandblasting through himself and his employees, agents and servants performed various services related to preparing surfaces to be painted and the Old McDowell Plant and incurred expenses related to the same.

40. On or about April 19, 2002, International Custom Products, Inc. through its agents, servants and employees, informed David R. Steele d/b/a David R. Steele Painting and Sandblasting that it was terminating the Agreement for Contracted Services and discharged him from the project without cause or provocation, thereby preventing the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting from completing the project.

#### **COUNT I - BREACH OF CONTRACT**

41. The averments of Paragraphs 33 through 40 of this Counterclaim are incorporated herein by reference thereto.

42. The Plaintiff, International Custom Products, Inc.'s, actions of terminating the Agreement for Contracted Services and discharging the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting from the project without cause or provocation thereby preventing the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting from completing the project constitutes a breach of the Agreement for Contracted Services.

43. As a result of the Plaintiff, International Custom Products, Inc., breaching the Agreement for Contracted Services, the Defendant, David R. Steele, d/b/a David R. Steele Painting and Sandblasting, lost anticipated profits on the total contract price in excess of \$80,000.00.

**WHEREFORE**, the Defendant, the Defendant, David R. Steele, d/b/a David R. Steele Painting and Sandblasting, demands judgment in his favor and against the Plaintiff, International Custom Products, Inc., in an amount in excess of the local arbitration limits plus interest and costs

and such other relief as the Court deems appropriate.

## **COUNT II - BREACH OF CONTRACT**

44. The averments of Paragraphs 33 through 40 of this Counterclaim are incorporated herein by reference thereto.

45. The Defendant, David R. Steele d/b/a Steele's Painting and Sandblasting plead Count II of this Counterclaim in the alternative to Count I of said Counterclaim.

46. On or about April 5, 2002, a Job Material Change was executed by Dennis Raybuck on behalf of the Plaintiff, International Custom Products, Inc., and David R. Steele on behalf of the Defendant, David K. Steele d/b/a Steele's Painting and Sandblasting. A copy of said Job Material Change is attached hereto as Exhibit B and made part hereof.

47. Said Job Material Change provided that the Plaintiff, International Custom Products, Inc., would purchase the paint to be used for the painting of the warehouse roof/ceiling portion of the Old McDowell Plant and that said amount to be paid by the Plaintiff, International Custom Products, Inc., would be deducted from the original bid and contract price of \$95,000.00 for that particular area.

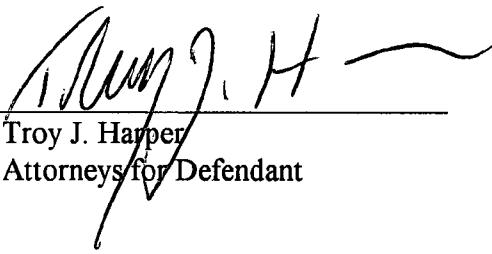
48. Said Job Material Change provided that the Plaintiff, International Custom Products, Inc., would pay the Defendant, David R. Steel d/b/a Steele's Painting and Sandblasting an amount of \$40,000.00 in addition to the \$30,000.00 advance payment that was made to the Defendant, David R. Steele d/b/a Steele's Painting and Sandblasting.

49. The Plaintiff, International Custom Products, Inc.'s, actions of terminating the Agreement for Contracted Services after the Job Material Change and discharging the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting from the project without cause or provocation thereby preventing the Defendant, David R. Steele d/b/a David R. Steele Painting and Sandblasting from completing the project and the Job material Change constitutes a breach of the Agreement for Contracted Services and Job Material Change.

50. As a result of the Plaintiff, International Custom Products, Inc., breaching the Agreement for Contracted Services and Job Material Change, the Defendant, David R. Steele, d/b/a David R. Steele Painting and Sandblasting, lost anticipated profits on the Job Material Change in excess of \$30,000.00.

**WHEREFORE**, the Defendant, the Defendant, David R. Steele, d/b/a David R. Steele Painting and Sandblasting, demands judgment in his favor and against the Plaintiff, International Custom Products, Inc., in an amount in excess of the local arbitration limits plus interest and costs and such other relief as the Court deems appropriate.

DENNISON, DENNISON & HARPER

By   
Troy J. Harper  
Attorneys for Defendant

International



Custom Products, Inc.

INTERNATIONAL CUSTOM PRODUCTS, INC.

IMPORTERS • EXPORTERS • MANUFACTURERS • DISTRIBUTORS

302 W. WASHINGTON AVE., PO. BOX 527A, DUBOIS, PA 15801 (USA)  
TELEPHONE (814) 375-9600

**AGREEMENT FOR CONTRACTED SERVICES**

This AGREEMENT is made as of the 14 nd day of November, 2001

Between *International Custom Products, Inc./OWNER*

And the *Steele's Painting and Sandblasting/CONTRACTOR*

The PROJECT is: Specialty Cleaning and Painting

The OWNER and CONTRACTOR agree as set forth herein

1. The WORK SCOPE of this contract is, refer to the attached schedule for details on the work scope. )
2. The DATE of commencement shall be December 3, 2001.
3. The Contractor shall achieve SUBSTANTIAL completion no later than January 18, 2002.
4. PAYMENT AMOUNTS, if agreed to, will be made based upon completion of the WORK SCOPE. The OWNER agrees to an advance payment of \$30,000.00 to the CONTRACTOR two weeks prior to the commencement date (as stated above) of this agreement. Installment payments will be made based upon completion of work by the CONTRACTOR. Payments will be made on Friday following the CONTRACTOR submitting to the OWNER an invoice.
5. The OWNER shall make a FINAL PAYMENT, constituting a minimum of \$30,000.00 or the entire unpaid balance of the CONTRACT SUM not to exceed the total CONTRACT SUM (as stated above), to the CONTRACTOR when the contract work has been fully performed by the CONTRACTOR and approved by the OWNER.

**EXHIBIT  
A**

6. Changes in the AGREEMENT for CONTRACTED SERVICES

Changes in the work may be accomplished after execution of this AGREEMENT and without invalidating the AGREEMENT. A change order shall be based upon agreement among the OWNER, CONTRACTOR and ARCHITECT/ENGINEER.

7. Risk Management

Insurance Coverage: The Contractor shall purchase from and maintain in a company lawfully authorized to do business in the jurisdiction in which the project is located. The Contractor shall carry the type and level of coverage acceptable to the OWNER. Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the work.

(See attached Insurance Schedule)

8. Termination

The OWNER may terminate this AGREEMENT if the CONTRACTOR, (1) repeatedly refuses to supply enough properly skilled workers or proper materials; (2) fails to make payment to subcontractors for materials or labor in accordance with their respective agreements between the CONTRACTOR and the subcontractors, (3) persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or (4) otherwise is guilty of substantial breach of a provision of this AGREEMENT. If the unpaid balance of the AGREEMENT sum exceeds costs of finishing the work, including the ARCHITECT'S services and expenses, such excess shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to the OWNER.

The OWNER may, without cause, order the CONTRACTOR in writing to suspend, delay or interrupt the work in whole or in part for such a period of time as the OWNER may determine. An adjustment shall be made for increases in the cost of performance of the suspension, delay or interruption.

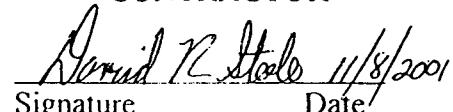
9. THE CONTRACT DOCUMENTS, except for Modifications issued after execution of this contract, are enumerated below:

OWNER

  
Signature Date  
11/4/01

Kenneth J. Mitchell CFO  
(Printed Name and Title)

CONTRACTOR

  
Signature Date  
11/8/01

David R. Steele OWNER  
(Printed Name and Title)

My price was \$1.90 per. sq. ft. 50,000 sq ft \$95,000.00

\$30,000.00 was payed at start in Nov. -\$30,000.00

\$65000.00

Minus Price of Paint in spec. 1 coat Primer -\$11,010.00  
2 coats Finish -\$16,852.00

Amount of LABOR due 1 coat Macropoxy  
2 coat Epoxy

\$37,138.00

Job material change  
? EXTRA LABOR FOR USING EPOXY'S

LENS COVERS  
Paper suit's

NET \$37,138.00  
\$16,000.00  
\$21,138.00

EXHIBIT

B

## VERIFICATION

I verify that the averments made in the foregoing Answer, New matter and Counterclaim are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa.C.S.A. Section 4904, relating to unsworn falsification to authorities.

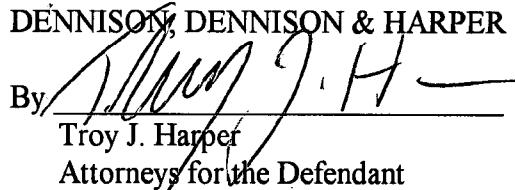
David R. Steele  
David R. Steele

## **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Answer, New Matter and Counterclaim was served on the 18<sup>th</sup> day of April, 2003, by United States Mail, First Class, Postage Prepaid, addressed to the following:

Christopher E. Mohney, Esq.  
90 Beaver Drive, Suite 210A  
Dubois, Pennsylvania 15801

Gregory H. Teufel, Esq.  
Schnader, Harrison, Segal & Lewis  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, Pennsylvania 15222

DENNISON, DENNISON & HARPER  
By   
Troy J. Harper  
Attorneys for the Defendant

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

INTERNATIONAL CUSTOM  
PRODUCTS, INC.

Plaintiff,

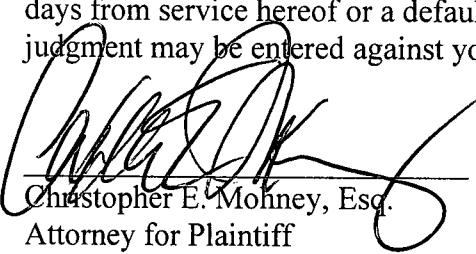
v.

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING,

Defendant.

**NOTICE TO PLEAD:**

You are hereby notified to plead to the  
within New Matter within twenty (20)  
days from service hereof or a default  
judgment may be entered against you.

  
Christopher E. Mohney, Esq.  
Attorney for Plaintiff

) CIVIL ACTION No. 03-81-40  
)  
>) **Reply to New Matter and Answer and New  
Matter to Counterclaim**  
)  
>) Filed on behalf of:  
>) Plaintiff, International Custom Products, Inc.  
)  
>) Counsel of record for this party:  
)  
>) Michael G. Bock, Esquire  
>) Pa. ID. 62360  
>) Gregory H. Teufel, Esquire  
>) Pa. ID. 73062  
>) Schnader Harrison Segal & Lewis LLP  
>) Suite 2700, Fifth Avenue Place  
>) 120 Fifth Ave.  
>) Pittsburgh, PA 15222  
>) (412) 577-5289  
)  
>) Christopher E. Mohney, Esq.  
>) Pa. I.D. No. 63494  
>) 90 Beaver Drive, Suite 201A  
>) DuBois, PA 15801  
>) (814) 375-1044

**FILED**

MAY 09 2003

William A. Shaw  
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

INTERNATIONAL CUSTOM PRODUCTS, INC. : CIVIL ACTION No.

Plaintiff, :  
vs. :  
DAVID R. STEELE, D/B/A STEELE'S :  
PAINTING AND SANDBLASTING, :  
Defendants. :  
:

**REPLY TO NEW MATTER  
AND ANSWER AND NEW MATTER TO COUNTERCLAIM**

AND NOW COMES the Plaintiff, International Custom Products, Inc. ("ICP"), by and through its undersigned counsel, and hereby files the following Reply to New Matter and Answer and New Matter to Counterclaim:

**REPLY TO NEW MATTER**

29. Denied. It is denied that at all times material hereto Defendant performed services under the Agreement in a workmanlike fashion. On the contrary, Defendant performed services in an unworkmanlike manner. The allegations of the Complaint are incorporated by reference as if fully set forth herein.

30. Denied. It is denied that ICP breached the agreement by terminating and discharging Defendant. On the contrary, such termination/discharge was fully proper after Defendant's numerous material breaches of the Agreement as set forth at length in the Complaint.

31. Denied. It is denied that ICP prevented the Defendant from completing the project and performing his duties by wrongfully terminating the Agreement. On the contrary, ICP properly terminated the Agreement, for the reasons set forth in the Complaint.

32. Denied. The averments of paragraph 32 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response may be required, it is denied that ICP's action is barred by failure of consideration. On the contrary, there was mutual consideration for the Agreement, namely the payment of money by ICP and the performance of services by Defendant, and consideration is not a required element of Count II of the Complaint.

#### **ANSWER TO COUNTERCLAIM**

33. Admitted upon information and belief. Also upon information and belief, Defendant also does business under the name Steele's Painting and Sandblasting.

34. Admitted.

35. Admitted in part and denied in part. It is admitted that the parties entered into the Agreement on or about November 14, 2001, and Exhibit A to the Counterclaim is a portion of the Agreement. It is denied that Exhibit A is a complete copy of the Agreement. On the contrary, a complete copy of the Agreement was attached as Exhibit C to the Complaint. In the Agreement, the Defendant is identified as "Steele's Painting and Sandblasting" not "David R. Steele Painting and Sandblasting."

36. Admitted. By way of further response, the preparation and painting work was defined in the Specifications. Paragraph 8 of the Complaint is incorporated by reference as if fully set forth herein.

37. Denied as stated. The description of services outlined in paragraph 36 of the Counterclaim is incomplete. The contracted services were further defined by the Specifications to the Agreement. Paragraph 8 of the Complaint is incorporated by reference as if fully set forth herein.

38. Admitted.

39. Admitted in part and denied in part. After reasonable investigation, ICP is without information sufficient to form a belief as to Defendant's alleged expenses. Despite repeated requests, Defendant has failed to produce any documentation of any expenses. ICP admits that Defendant performed various services, but such services were not performed in a workmanlike manner or in accordance with the Agreement. Paragraph 20 of the Complaint is incorporated by reference as if fully set forth herein.

40. Admitted in part and denied in part. It is admitted that ICP terminated the Agreement on or about April 19, 2002. It is denied that ICP did so without cause or provocation. On the contrary, ICP had proper cause for termination, as is explained in the Complaint.

### **Count I**

41. ICP's responses to paragraphs 33 through 40 of the Counterclaim are incorporated by reference as if fully set forth herein.

42. Denied. The averments of paragraph 42 are legal conclusions to which no response is required. To the extent a response may be required, ICP denies that it terminated the Agreement without cause or provocation in breach of the Agreement. On the contrary, ICP had proper cause for terminating the Agreement for the reasons set forth in the Complaint.

43. Denied. After reasonable investigation, ICP lacks information sufficient to form a belief as to whether Defendant suffered any damages. It is denied that any damages were caused by any breach of the Agreement by ICP. On the contrary, ICP did not breach the Agreement. By way of further response, Defendant could not have suffered lost profits in excess of \$80,000 because the total contract price was reduced to \$70,000 on April 5, 2002. Paragraphs 15 and 16 of the Complaint are incorporated by reference as if fully set forth herein.

## **Count II**

44. ICP's responses to paragraphs 33 through 40 of the Counterclaim are incorporated by reference as if fully set forth herein.

45. Denied. The averments of paragraph 45 are conclusions of law to which no response is required.

46. Denied as stated. Paragraphs 15 and 16 of the Complaint are incorporated by reference as if fully set forth herein.

47. Admitted in part and denied in part. It is admitted that the Agreement was changed such that ICP would purchase the paint and the price in the Agreement would be reduced accordingly. It is denied that the price reduction applied only to the roof/ceiling portion of the Agreement. On the contrary, the scope of the Agreement was also reduced such that the only area to be painted was the roof/ceiling of the warehouse area. The total contract price was reduced to \$70,000. Paragraphs 15 and 16 of the Complaint are incorporated by reference as if fully set forth herein.

48. Denied as stated. Paragraphs 15 and 16 of the Complaint are incorporated by reference as if fully set forth herein.

49. Denied. The averments of paragraph 49 are legal conclusions to which no response is required. To the extent a response may be required, ICP denies that it terminated the Agreement without cause or provocation in breach of the Agreement. On the contrary, ICP had proper cause for terminating the Agreement for the reasons set forth in the Complaint.

50. Denied. After reasonable investigation, ICP lacks information sufficient to form a belief as to whether Defendant suffered any damages. It is denied that any damages were caused by any breach of the Agreement by ICP. On the contrary, ICP did not breach the Agreement.

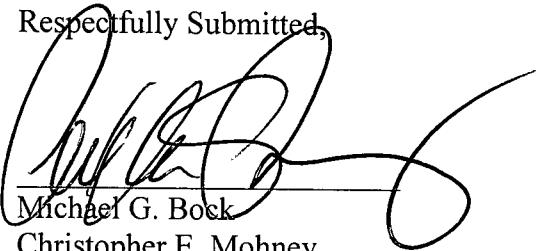
## **NEW MATTER TO COUNTERCLAIM**

51. ICP incorporates the allegations of its Complaint as if fully set forth herein.
52. Defendant has failed to state a claim on which relief can be granted.
53. Defendant's Count I is barred by the amendment of the Agreement.
54. Defendant's claims are barred by the doctrine of estoppel.
55. Defendant's claims are barred by laches.
56. Defendant's claims are barred by the doctrine of unclean hands.
57. Defendant failed to satisfy conditions precedent to entitlement to compensation.
58. Defendant's claims are barred or reduced by reason of Defendant's failure to mitigate damages.
59. Defendant's claims are barred by reason of Defendant's material breaches of the Agreement.
60. ICP is not responsible for any damages incurred by Defendant. Any such damages to Defendant are a result of Defendant's own conduct or the conduct of others, and not ICP.
61. Defendant's claims are barred by the operation of the conditions and terms of the Agreement.
62. Defendant's claims are barred by reason of Defendant's own bad faith and inequitable conduct.
63. Defendant's claims are barred or reduced by ICP's rights of set-off and ICP's claims against Defendant.
64. Defendant's claims are barred by Defendant's waiver.
65. Defendant failed to prosecute his work in a timely manner.

66. Defendant failed to complete all work required of him under the Agreement.
67. Defendant has failed to maintain and present adequate supporting documentation for the damages Plaintiff claims.
68. Defendant employed improper construction means and methods in the performance of his work.
69. Defendant's claims are barred or reduced by Defendant's failure to perform his work in a good, workmanlike manner and in accordance with industry standards and practices.
70. Defendant's claims are barred by Defendant's repeated failure to cooperate with ICP in the performance of the Agreement.
71. Defendant's claims are barred by Defendant's failure to use adequate equipment, failure to adequately supervise workers, employing unsuitably young workers, and failing to abide by the reasonable work schedule that was requested by ICP and to which Defendant agreed.

May 8, 2003

Respectfully Submitted,



Michael G. Bock  
Christopher E. Mohney  
Gregory H. Teufel

**VERIFICAITON**

I am Chief Financial Officer of International Custom Products, Inc., and I am authorized to sign this verification on its behalf. I have read the foregoing Reply to New Matter and Answer and New Matter to Counterclaims and reviewed the allegations contained therein. To the best of my knowledge, information and belief, those allegations are true. I understand that I make this verification subject to the penalties of 18 Pa. Cons. Stat. § 4904, regarding unsworn falsification to authorities.

Date: May 8, 2003

  
Kenneth J. Mitchell

**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2003, a true and correct copy of the foregoing  
**Reply to New Matter and Answer and New Matter to Counterclaim** was mailed, via U. S.  
Mail, first class postage prepaid, to the following:

Troy J. Harper, Esq.  
Dennison Dennison & Harper  
293 Main Street  
Brookville, PA 15825-1291

A handwritten signature in black ink, appearing to read "Troy J. Harper", is written over a horizontal line.

3cc  
Atty Mohney

**FILED**

17-05-09  
MAY 09 2003

William A. Shaw  
Prothonotary

LAW OFFICES

**CHRISTOPHER E. MOHNEY**

90 BEAVER DRIVE - SUITE 201A

DUBOIS, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

INTERNATIONAL CUSTOM  
PRODUCTS, INC.

CASE NO. 2003-81-CD

Plaintiff,

v.

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING,

Defendant.

**Praecipe to Mark Settled and  
Discontinued with Prejudice**

Filed on behalf of:

Plaintiff, International Custom Products,  
Inc.

Counsel of record for this party:

Michael G. Bock, Esquire  
Pa. ID. 62360  
Gregory H. Teufel, Esquire  
Pa. ID. 73062  
Schnader Harrison Segal & Lewis LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Ave.  
Pittsburgh, PA 15222  
(412) 577-5289

Christopher E. Mohney, Esq.  
Pa. I.D. No. 63494  
90 Beaver Drive, Suite 111-B  
DuBois, PA 15801  
(814) 375-1044

**FILED**

**AUG 25 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

INTERNATIONAL CUSTOM PRODUCTS, INC. :

CASE NO. 2003-~~2014CD~~ A 930

Plaintiff, :

vs. :

DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING, :

Defendants. :

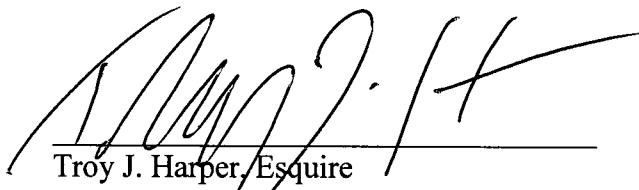
DAVID R. STEELE  
PAINTING AND SANDBLASTING  
vs. DAVID R. STEELE, D/B/A STEELE'S  
PAINTING AND SANDBLASTING

**PRAECIPE TO MARK SETTLED AND  
DISCONTINUED WITH PREJUDICE**

TO: Prothonotary

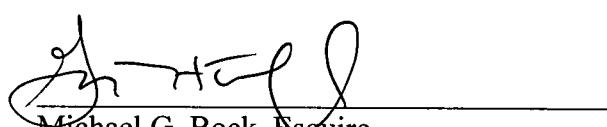
PLEASE mark the above-captioned matter as settled and discontinued with prejudice.

Respectfully submitted,



Troy J. Harper, Esquire  
PA I.D. #74753  
293 Main Street  
Brookville, PA 15825  
(814) 849-8316

Attorney for Defendants



Michael G. Bock, Esquire  
PA I.D. #62360  
Gregory H. Teufel, Esquire  
PA I.D. #73062  
SCHNADER HARRISON SEGAL  
& LEWIS LLP  
Suite 2700, Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3001  
(412) 577-5200

Christopher E. Mohney, Esquire  
PA I.D. #63494  
90 Beaver Drive, Suite 111-B  
DuBois, PA 15801  
(814) 375-1044

Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Praeclipe ~~7/14/04~~ ~~MSK 23~~ and  
Discontinued with Prejudice was served upon the following counsel by U.S. ~~First class mail~~ ~~Priority mail~~  
postage prepaid, this 10 day of August, 2004:

Troy J. Harper, Esquire  
293 Main Street  
Brookville, PA 15825



IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**International Custom Products, Inc.**

**Vs.**

**No. 2003-00081-CD**

**David R. Steele d/b/a  
Steele's Painting and Sandblasting**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on August 25, 2004, marked:

Settled and Discontinued with Prejudice

Record costs in the sum of \$92.00 have been paid in full by Christopher E. Mohney, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 25th day of August A.D. 2004.

---

William A. Shaw, Prothonotary